

January 7, 2014

TO: Assembly Consumer Protection Committee
Jeremy Thiesfeldt, Chairman

FR: Ed Lump, President and CEO
Susan Quam, Executive Vice President
Wisconsin Restaurant Association

RE: Support of Assembly Bill 550



The Wisconsin Restaurant Association represents over 7,000 foodservice outlets in the state and represents all aspects of the restaurant industry, from small “mom and pop” restaurants to multi-unit, multi-state restaurants.

WRA and its members are dedicated to food safety and for that reason WRA is here today to support Assembly Bill 550 which updates and improves Wisconsin’s Certified Food Protection Manager requirements for restaurants.

Since 1933, Food Safety has been a priority for the association. In our founding year, we dedicated ourselves to lobby to establish a high quality restaurant inspection- **paid for by the industry**. The reason for that was that WRA new the importance of high standards for food safety in order to protect the public and the integrity of the industry.

A little over 20 years ago, WRA led a broad based coalition that included all the various hospitality groups, educators and regulators that lobbied to mandate every restaurant in Wisconsin to have a Certified Food Protection Manager on staff.

In 1999, WRA also worked with the city of Milwaukee, when it mandated each restaurant had to have a certified manager on duty during hours of preparation and operation when more than 5 food handlers are present.

In 2008, the City of Milwaukee also passed an ordinance to require all Certified Food Protection Managers who work in the City of Milwaukee to be recertified by taking an a National Conference for Food Protection (CFP) accredited examination. It is important to note that there was no opposition to this requirement. We are unaware of any problems either.

I am proud to have participated in the development of all of these requirements for Milwaukee and Wisconsin restaurants. I know that sounds odd coming from a person & organization dedicated to protect the restaurant industry and, in many cases, oppose regulation. But in these cases, I and the WRA did what is necessary to protect and improve the industry now and for the future.

Now that the Certified Food Protection Manager requirement has been in place for almost 20 years, we believe that it is time to update the requirements to reflect what industry and regulatory officials have learned since 1995. Our current law is just the first step in improving food safety in Wisconsin, but it is no longer enough to make a large impact on preventing food borne illnesses. Yes, we saw improvement in food safety 20 years ago. But, when we analyzed foodborne illness data in Wisconsin over the past 12 years, we saw this improvement level off. But when we look at states, like Florida, which have stronger CFPM requirements, they have seen a steady decline in outbreaks. California and Illinois have recently enacted even stronger laws as have local jurisdictions in other parts of the country.

An outbreak of foodborne illness usually makes headline news or a lead story on TV. To those sickened, it can be a tragedy. It certainly will be a discomfort. To the restaurant, it is likely to be fatal and to the industry in the area, it will cause financial pain as well. Entire chains have gone out of business because of an outbreak in a single unit. In this era dining out has become, not just a necessity but an established part of our lifestyle. The consumer interest in “all things” restaurant is huge. Some of the most popular segments in TV news are similar to WTMJ’s Dirty Dining. Newspapers regularly feature columns about food safety reports. Consumers can also easily go on line to view inspection reports. A state of Wisconsin online data base on this subject will soon be available. Just because it hasn’t happened in a particular area doesn’t mean it won’t- it likely will soon. This article just appeared last week in the Milwaukee Journal Sentinel – many of the violations described are avoidable, especially when a CFPM is present.

There are three important components to AB 550:

- Preemption of local laws that differ or are more aggressive than what is in state statute
- Require recertification testing, which means taking an exam approved by the Department of Health Services to renew certification every five years
- Require a CFPM be on premise whenever there are 6 or more food handlers working

We will give you our input as to why we support each of them. Many of the arguments you hear today against these improvements are financially based. We acknowledge there will be small increases for some operators, but should that be the reason we do not improve food safety in our state? On the other hand, some operators will be able to save money because the test is cheaper than the currently mandated class. As any operator that has had a food borne illness or dirty dining segment attributed to their restaurant will tell you, spending the extra money on a CFPM is a lot cheaper than going out of business because the public no longer trusts you.

Let’s not wait for the next major E coli or Norovirus outbreak to negatively affect the restaurant and tourism industry in Wisconsin. Let’s prevent it before it happens. Let’s reduce the number of dirty dining exposes because fewer restaurants have serious violations.

Local Preemption

Regulation of food and food safety belongs at the state or federal level, not at the local level. The Legislature recently preempted local regulation of portion sizes and nutritional values of foods served in restaurants, for this very reason. In Wisconsin, local governments may serve as agents of the state in food safety enforcement, but the laws, administrative rules and codes they enforce are state laws.

Preempting local governments from enacting their own CFPM ordinances will prevent a further patchwork around the state of differing ordinances, going forward. Our industry has a difficult time when islands of regulation are created. This problem is not only for the big, multi-unit companies. Many restaurant owners, even smaller independents, have more than one location, and many times in more than one municipality. Our industry needs regulatory consistency between all jurisdictions in order for us to maintain consistency and quality within our own operations.

Yes, we supported Milwaukee’s current ordinances that require both testing for recertification and an on premise requirement. WRA supported these initiatives for two reasons – because they are proven ways to protect public health and our industry and because our Milwaukee members supported it. Both the on premise and recertification testing requirements have proven positive in Milwaukee and show enacting those requirements for the rest of the state should prove the same.

I am going to ask Susan Quam, WRA's Executive Vice President, to finish our testimony. Susan represents WRA on a state and national level by participating on many food safety committees and task forces. She was chosen by the national Conference for Food Protection to serve as vice chair for its Council II in 2012-2014 and will chair that Council for the 2014-2016 biennium. As she serves on her committees and councils, her main goal is to provide a voice for the small independent restaurant operator. She works with representatives of local, state and federal government, along with food safety experts from major restaurant and the National Restaurant Association.

Thank you for your consideration. I will remain at the podium to help answer questions at the conclusion of Susan's testimony.

Recertification Testing

Twenty plus years ago, when the Wisconsin legislature voted to require all restaurants to have one CFPM on staff, we were one of the first states or jurisdictions to do so. We did so to improve the knowledge of restaurants managers and to better protect the public.

At that time the Conference for Food Protection was just getting started in developing a set of national standards for the development of CFPM exam and certification practices. National standards are important to provide consistency across the country and to ensure those with the credential have truly demonstrated food safety knowledge.

Since then, the Conference has developed a strong set of standards which are followed by test development organizations who wish to provide CFP accredited CFPM exams (there are four approved exams for use in Wisconsin). Twenty four states and additional 80 plus jurisdictions now require CFPMs in restaurants. All of them require CFPMs to pass a CFP accredited exam every 5 years, except for two – Minnesota and Wisconsin. These two states allow a CFPM to recertify by exam or by nothing more than seat time in a classroom.

The current law allowing recertification without passing an approved exam has resulted in:

- No reliable and legally defensible process for assessing continued competency of CFPMs.
- No consequence for the operator who fails to demonstrate competencies or learn new techniques in food safety through "seat-time" (direct training contact time) only training. Without the testing requirement, there is no consequence for not paying attention to important food safety information. This is not a reliable or legally defensible way of assessing a person's knowledge. Here are copies of a letter we received from a ServSafe instructor in Wisconsin. She teaches for WRA and other organizations and companies and is highly respected by her peers. It gives you an example of why testing every five years is important.
- A lack of uniformity between those states and other jurisdictions that include a CFP accredited examination as part of recertification and those who recertify in Wisconsin.

We believe that these three points are critical flaws in Wisconsin's current recertification process. It is for these same reasons that other states require taking an approved test every five years to remain certified.

Why is it important that a CFPM be tested and demonstrate knowledge on the latest food safety practices? Why does WRA want this requirement? It is because preventing food borne illness is a constantly moving target.

The FDA releases a new Retail Food Code every four years. FDA relies on the CFP to develop, debate and reach consensus on updates and additions to the FDA Food Code. This code is the basis for Wisconsin's own Food Code, which is followed by restaurants and other food establishments statewide. This is the code that state and local restaurant inspectors use to determine if a food establishment is safe enough to be open and serve the public.

The FDA releases a new Food Code every four years because there are always changes in science. As the Code is updated with new science, restaurant operators must change their own food safety practices and enact them in their restaurants.

A CFPM exam is designed to assess individuals' competence in food safety and in the practices required to protect the public from foodborne illness.

Periodic re-certification by accredited exam, as opposed to training only, is a necessary means to ensure continued public safety. Unlike training situations, whereby individuals may be awarded credit for simply being present, the certification examination provides an objective measure of an individual's safe food handling knowledge and is a valid and reliable demonstration of competency. The passing of an exam from a CFP accredited test provider proves that a basis of knowledge has been gained (or retained) and will hopefully be taken back to the foodservice operation and applied

On Premise requirement

For the same reasons that we update food safety regulations every four years, restaurants are no longer inspected by just looking at floors, walls and equipment for cleanliness, like there were 20 years ago. Inspections are now based on what will prevent food borne illnesses. Inspectors evaluate operators on their ability to implement an entire food safety system from the time food enters their back door to their customer walks out their front door. Operators must be continually challenged to learn new food safety information to be able to keep clean food safety inspection report. Operators are also challenged to implement what is called Active Managerial Control. This concept means that the "person in charge" at any time in the restaurant is making sure that all food safety practices are being adhered to in the restaurant.

Let me give you an example of when Active Managerial Control is not in place. This is a true conversation I had this fall with a restaurant owner.

In this case, you see that when the one required CFPM is not in the restaurant, there is not a person in charge who is knowledgeable enough to make sure that all food safety practices are being adhered to. The violations in this case would have easily been avoided had a CFPM been present.

Data collected by the University of Minnesota, FDA and CDC have shown that the presence of a CFPM improves compliance with the Food Code and especially in areas that have the most to do with preventing food borne illness. This is a very key finding for our industry. It shows that investing in additional CFPMs will pay off.

Ideally, every restaurant would only need one CFPM who would train all of the other shift managers and persons in charge. Unfortunately, we know that this does not always happen. Not all owners and managers are good trainers. Not all employees learn the same way. Some restaurants do not have the training resources needed, especially our independent operators. Regardless of the reasons, our industry needs to ramp up the knowledge and professionalism of our persons in charge.

This is why we support the requirement of a CFPM on premise whenever there are 6 or more food handlers present. For some restaurants, this may only happen occasionally, such as for sporting events or Friday fish fries. In many cases, on busy days such as these, the CFPM would be present anyway, since most owners and/or general managers are present and are already certified. By setting the threshold at 6 or more food handlers, many smaller operators would not be included, even on busy days, unless they have two bad inspection reports in a row. If that happens, the department could require a CFPM at all times food is prepared, but the restaurant could earn their exemption back with two good inspection reports.

It should be noted that Wisconsin requires all establishments with a liquor license to have enough licensed bartenders on premise to observe all sales of adult beverages. This law helps prevent over service leading to intoxication and the sale of alcohol to underage persons. Depending on the size and layout of a restaurant, an operator may need 2-3 license holders to oversee all sales. Municipalities require licensees to renew every year so make sure bars and restaurants maintain an appropriate number of licensed bartenders. What does this have to do with food safety and CFPMs? It is an example where we have laws that require additional trained employees to oversee the sale of alcohol, in order to better protect the public. Shouldn't we consider food safety just as important?

Our leaders take food safety and protecting our industry very seriously. We do not look at these improvements to CFPMs as increased regulation. We look at it as just getting Wisconsin up to speed on protecting and improving our industry.



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DEC 17 2012

December 12, 2012

Ms. Susan Quam
Executive Vice President
Wisconsin Restaurant Association
2801 Fish Hatchery Road
Madison, WI 53713

Dear Susan:

My ServSafe certification and Wisconsin recertification class this week had examples of both the best and the worst of those participating in recertification.

In the best example, a woman told me during registration that she had read the book and learned there were things that she needed to change in her establishment. By the worn look of her book, I believe that she did read it. She asked very good questions during class. I think that she learned and will implement what she learned. Of course, I do not know this for certain.

In the worst example, a man came with his wife. During registration, she explained that she was there to interpret for him since his English was not good. During the first half of the recertification class, she did not say much to him. Both of them left the room, at different times, for short periods of time. After break, I showed the next video. When the video was over, I started one of the longer slide sections. It was when I started reviewing the slides with the class that I noticed that she was not in the room and he was sleeping.

When I finished the slides and started the next video, she was still absent. I went to his table and woke him. When she did enter the room, she was absent for at least 45 minutes. If she did not return from break, she would have been absent for 60 minutes.

During the video, I called Neacia and explained the situation. As you know, you instructed me to not give him his letter as he could not complete the requirements of the review session if his interpreter was absent and he was sleeping. I did this.

The examples of people attending recertification and who appear to be taking it seriously and learning are few. I do not average even one in every class. I may go two to three classes before I have someone who appears to be paying close attention and asking questions.

Unfortunately, in almost every class I have at least one, sometimes more, recertification people who spend quite a bit of time outside the room, presumably on their phones, or texting, emailing, or using social media on their phones in the classroom. This is in spite of the fact that I do explain the purpose of the class. There have been times when I have had to leave the room during the videos and ask people to return to the room.

Occasionally, I have people who tell me that they have been in the business for 30, 40, 50 years and that they know all about food service. I try to explain that things change and that is the reason that there is the requirement to attend a review course. I do not think I have changed any minds.

It is also fairly common to have people in the recertification class that do not speak or understand English well. I can usually tell by how they respond during registration. If their understanding of English is poor, there is not any way they can be getting anything out of the class. It is possible, of course, that they understand the material from reading the manual. But there is not any way to know that.

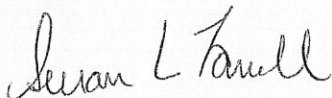
Most of the people in the recertification class are neutral. They are there physically, but I cannot tell if they are really paying attention or not. They may not ask questions because they really do know the information or because they do not care and are just going through the motions.

Since I cannot read minds, there is not any way for me to know whether any of these people really learned the information or not. Nor can anyone else. The only way to know is through a credible, comprehensive exam—like ServSafe.

I do not know all the ramifications of requiring passing the ServSafe exam every five years to renew Wisconsin certification. If the goal is to protect the public, however, that is the only way to ensure that people are learning the new information. It does not guarantee that they will implement it, of course, but it is certain that they will not implement new information if they do not know it.

If you have any questions, or would like to discuss this further, please contact me. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Farrell".

Susan L. Farrell, MBA, RD

Wisconsin Restaurant Association Sample Practice Exam Questions

Circle the letter of the correct answer:

1. What is the temperature range of the temperature danger zone?

- a. 0° F to 212° F (-18° C to 100° C)
- b. 32° F to 100° F (0° C to 38° C)
- c. 41° F to 135° F (5° C to 57° C)
- d. 70° F to 155° F (21° C to 68° C)

2. What is the first step in developing a HACCP plan?

- a. Identify corrective actions
- b. Conduct a hazard analysis
- c. Establish monitoring procedures
- d. Determine critical control points

3. You should label all ready-to-eat TCS food that is prepped in-house and held longer than

- a. 12 hours
- b. 24 hours
- c. 48 hours
- d. 72 hours

4. Enterohemorrhagic and shiga toxin-producing E. coli are commonly linked to what type of food?

- a. Potato salad
- b. Thick stews
- c. Dairy products
- d. Raw ground beef

5. A food handler has been diagnosed with an illness from Shigella spp. What should the manager tell this food handler to do?

- a. Stay home until a doctor approves a return to work
- b. Wear gloves while handling food
- c. Work in a nonfood handling position
- d. Wash hands frequently while handling food

6. What is the key to limiting bacterial growth?

- a. Controlling time and temperature
- b. Evaluating the menu selection
- c. Managing personal hygiene
- d. Using food additives

7. The effectiveness of chemical sanitizers is NOT affected by its

- a. Concentration
- b. Contact time
- c. Color
- d. Temperature

8. A hose connected to a running faucet that is left submerged in a bucket is an example of a(n)

- a. Air gap
- b. Vacuum breaker
- c. Cross-connection
- d. Potable water source

9. Hot TCS food that has been held below 135° F (57° C) for over 4 hours should be

- a. Reheated to 165° F (74° C) for 15 seconds
- b. Thrown out immediately
- c. Mixed with other hot food
- d. Eaten within 2 hours

10. Where should pesticides be stored?

- a. Above workstations in the food-prep area
- b. In a secure storage area away from food
- c. On the bottom shelf of the dry-storage area
- d. In a bin or box under the sink

11. Food should be cooled from 135° F (57° C) to 70° F (21° C) within ____ hours, and then from 70° F (21° C) to 41° F (5° C) within ____ hours.

- a. 2, 4
- b. 3, 4
- c. 3, 6
- d. 4, 2

Key

1. c

2. a

3. b

4. d

5. a

6. a

7. c

8. c

9. b

10. b

11. a

Milwaukee County

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Database details restaurant inspections in 4-county Milwaukee region

Reports show violations in Milwaukee, Waukesha, Ozaukee, Washington counties

By Lydia Mulvany of the Journal Sentinel

Dec. 30, 2013

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Searchable Database



Milwaukee area restaurant inspections: The Journal Sentinel's restaurant inspections database shows food safety violations for restaurants in Milwaukee, Waukesha, Washington and Ozaukee counties, with some records going back to January 2012.

For the first time, consumers can conveniently read recent restaurant inspections reports from the four-county Milwaukee region all in one place.

Included in the Milwaukee Journal Sentinel's newly expanded database of restaurant inspections are records from municipalities in Waukesha, Washington and Ozaukee counties, as well as the city of Milwaukee and many health agencies in Milwaukee County.

From using skin care products in a lemonade machine to employees getting their hands on raw hamburgers just before picking up hamburger buns, you can find it all in the inspection database.

Some Milwaukee County cities, including the southern suburbs of Franklin and Greenfield, are still in the process of releasing records, and Wauwatosa has denied the Journal Sentinel access to its restaurant inspections, citing privacy concerns because its inspection database contains personally identifiable medical information.

Among 16 restaurants in the four-county database that received four or more critical violations since mid-November, citations related to hand-washing were the most numerous at 25. For example, a health inspector slapped a West Bend restaurant with three such citations in late November — for blocking access to a sink and not having towels or soap at some sinks.

Health officials also found more than a dozen instances of undated or expired food and many problems with food temperatures, dish

sanitizers and unclean equipment.

There were a few cases of putting raw foods in places where they shouldn't be, namely close to cooked food. During a November inspection, for example, a Menomonee Falls restaurant had raw chicken stored over sauces and lots of soiled equipment and items, including soda guns and cook line equipment.

Other highlights (or, perhaps, lowlights):

■During a Dec. 3 inspection at Terra Restaurant & Bar, which dishes out Mexican cuisine on S. 6th St. in Walker's Point, an inspector found raw meat stored above produce and above cooked food, saying "the condition of the kitchen, and the lack of attention to code requirements such as date-marking and prevention of cross-contamination, indicate that no one is taking responsibility for food safety."

A call to the listed license holder wasn't immediately returned.

■During a Dec. 4 inspection at Kwik Wok, a Chinese restaurant on S. Howell Ave., an inspector found mold buildup inside the lemonade machine cover, and Vaseline — for skin — was being used to lubricate the ring on the machine. "Immediately discontinue this practice. All lubricants used that may have incidental contact with food-contact surfaces must be approved," the health inspector wrote.

Mike Otlah, the manager, said the lemonade machine wasn't being used and had been put away for the winter.

"We have one of the cleanest restaurants in Milwaukee," he said. "Anyone is welcome at any time to say, I'd like to come into your kitchen. That's how confident we are."

Kwik Wok had no violations at a reinspection on Dec. 26.

■At the George Webb on W. Greenfield Ave. in West Allis, a health inspector on Nov. 21 saw an employee touch raw meat and then touch ready-to-eat foods, such as hamburger buns, "numerous times." There was also no food thermometer to check whether foods were being cooked or stored at safe temperatures. Also a no-no: There was an employee with fancy nails handling food. "Prohibit employees from wearing nail polish or artificial nails when working with food unless the employee is wearing single-use gloves."

The restaurant hadn't received a reinspection as of Monday, and a message left for an owner or manager wasn't returned.

NewsWatch

Booth becomes Robert W. Baird & Co. president
12:24 p.m.

Region hunkers down as extreme cold strikes
Updated: 12:07 p.m.

Restaurants and bars closing because of the cold
Updated: 12:06 p.m.

City suspends night parking rules | 11:43 a.m.

Subzero 'polar vortex' pushes frigid air across US
11:35 a.m.

Man charged in Menomonee Falls high-speed chase | 11:25 a.m. [MyCommunity NOW](#)

CB Tramon Williams: Youth is good, but old guys make this league go, too | Updated: 11:17 a.m.

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January 7, 2014

Representative Jeremy Thiesfeldt
Room 16 West
State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Rep. Thiesfeldt,

I would first like to thank you for everything you are doing for our district and for Wisconsin. It is much appreciated.

I am sending you this letter to express my support of AB-550.

As a small business owner I have a lot of different issues on my plate that I must pay attention to. None are more important than food safety.

All of my kitchen food handlers are required to be Certified Food Protection Managers. I pay for them to attend the course and take the initial exam, as well as their recertification classes when they must renew. I feel the knowledge gained is essential to be preparing food in my kitchen.

I feel it is necessary to have all of my employees trained and certified to protect my business and my customers.

At this time I have 9 employees who are certified and one in the process. I post my staff's certificates on the restaurant wall for all to see. I want my customers to feel confident in my staff's ability to prepare quality food while using all the required food safety laws that Wisconsin requires.

I have had employees express a desire-after completing current recertification courses-to be given more information. This tells me that they are not getting enough information in their recertification classes and that recertification testing would be the answer. I would know for sure that my staff has achieved the full benefit of the class when they pass the exam.

I believe that recertification testing for all foodservice establishments would be a Win-Win for Wisconsin. Operators and managers must take food safety seriously, including being truly certified and knowledgeable in all food safety information. By requiring an accredited exam every five years, I feel that more emphasis will be placed on learning and practicing proper food safety procedures. Wisconsin consumers and tourists will be safer for it.

This issue could be compared to picking your doctor: would you choose a doctor who proved he or she had the knowledge to treat you or one who could not? Wisconsin foodservice guests want to know that when it comes to food safety they can feel safe while dining in our establishments.

I know that a testing requirement will cost me and my fellow small businesses a few more dollars to implement, but I feel the benefits are worth it. And besides-we are talking about taking an exam every five years-not every year. The cost of the exam will add about \$50.00 to current courses and other exam options. Spread out over five years-that is a small price to pay for knowledge. You cannot put a price on preventing a food borne illness.

Our industry cannot afford bad publicity from foodborne illness outbreaks and the Dirty Dining segments on the local news. Also, there is the fact that norovirus outbreaks are on the rise, and around 70 percent of confirmed cases can be traced back to restaurants. These are both good justifications for encouraging, or even requiring, training and/or certification.

There is also an FDA study showing that incidence of foodborne illness outbreaks drop significantly when there is a Certified Food Protection Manager on duty.

In conclusion, I must say that I can't imagine why any reputable food establishment would not want their food handlers to be as knowledgeable as possible on food safety. By which ONLY recertification testing can prove!

I would ask that you please support AB-550.

Thank you for your time,

Sincerely,

Linda Wendt

Wendt's on the Lake

Van Dyne, Wisconsin 54979